

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 23 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2010-0146-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
MANUEL AUGUSTINE VILLA,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR50280

Honorable Deborah Bernini, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Manuel Augustine Villa

Douglas
In Propria Persona

B R A M M E R, Presiding Judge.

¶1 Manuel Augustine Villa petitions this court for review of the trial court's order summarily denying his third petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We review a trial court's ruling on a petition for post-conviction relief for an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We grant the petition for review but deny relief.

¶2 A jury found Villa guilty of first-degree murder, committed in 1995. He was sentenced in May 1996 to life in prison without possibility of parole for twenty-five years. We affirmed his conviction and sentence on appeal. *State v. Villa*, No. 2 CA-CR 96-0338 (memorandum decision filed May 28, 1998). The trial court denied Villa's first petition for post-conviction relief in 1999, and he did not seek review of that decision. The court summarily denied his second petition for post-conviction relief, filed in August 2005. We granted Villa's petition for review of that decision but denied relief. *State v. Villa*, No. 2 CA-CR 2006-0028-PR (memorandum decision filed Oct. 26, 2006).

¶3 Villa filed his third notice of and petition for post-conviction relief in March 2010, asserting our supreme court's decision in *Chronis v. Steinle*, 220 Ariz. 559, 208 P.3d 210 (2009), constituted a significant change in the law that was applicable retroactively to his case. *See* Ariz. R. Crim. P. 32.1(g), 32.2(b). Villa suggested *Chronis* permitted him to challenge for the first time in a Rule 32 petition the legal sufficiency of his indictment. The trial court denied relief, concluding *Chronis* only addressed challenges to aggravating circumstances in a capital case pursuant to Rule 13.5(c), Ariz.

R. Crim. P., and therefore was inapplicable to Villa because his “case is not a capital case.” See Ariz. R. Crim. P. 32.2(b), 32.6(c).

¶4 In his petition for review, Villa asserts *Chronis* and *Mejak v. Granville*, 212 Ariz. 555, 136 P.3d 874 (2006), represent a significant change in the law applicable to his case, requiring his conviction to be overturned. See Ariz. R. Crim. P. 32.1(g). But our supreme court in *Chronis* held that Rule 13.5(c) “allows a defendant in a capital case to request a probable cause determination for alleged aggravating circumstances.” 220 Ariz. 559, ¶ 20, 208 P.3d at 214. In so holding, the court analyzed Rule 16.6(b), Ariz. R. Crim. P., and cited *Mejak* in support of the proposition that challenges to the legal sufficiency of a charging document may inquire into the facts of the case. *Id.* ¶¶ 9-10, see *Mejak*, 212 Ariz. 555, ¶ 4, 136 P.3d at 875 (“If a defendant can admit to all the allegations charged in the indictment and still not have committed a crime, then the indictment is insufficient as a matter of law.”).

¶5 As the trial court correctly concluded in addressing Villa’s petition for post-conviction relief below, *Chronis* is entirely inapplicable to Villa’s case. Nothing in *Chronis* suggests a defendant can challenge the sufficiency of a charging document for the first time in a Rule 32 petition, and Arizona law plainly does not permit a defendant to do so. See Ariz. R. Crim. P. 13.5(e) (defects in charging document must be raised in accordance with Rule 16 pretrial motion procedure); Ariz. R. Crim. P. 16.1(a) (Rule 16 governs pretrial motions); *State v. Fullem*, 185 Ariz. 134, 136, 912 P.2d 1363, 1365 (App. 1995) (finding defendant waived challenge to indictment by failing to object in trial court). Moreover, despite his assertion that he is challenging the indictment, Villa’s

petition for review instead is dedicated largely to attacking the sufficiency of the evidence presented at trial, an issue he could have raised on direct appeal but did not. He thus is precluded from raising it in a petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.2(a)(1).

¶6 Accordingly, although we grant Villa’s petition for review, we deny relief.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge